

**SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF PHARMACY  
AND GARY W. BURGESS**

Comes now Gary W. Burgess ("Burgess" or "Licensee") and the Missouri Pharmacy Board ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license to practice pharmacy will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo<sup>1</sup>, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline Licensee's license and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri (2000), as supplemented.

knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline his license, along with citations to law and/or regulations the Board believes was violated.

Solely for the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's pharmacist license number 41818, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo. Licensee and the Board understand that the stipulations set forth in this settlement agreement are solely for the purposes of resolving this matter, and cannot be used against Licensee for any other reason or in any other proceeding. Licensee and the Board understand that the Board may take into consideration the findings of fact and conclusions of law set forth in this document in any subsequent disciplinary action based on events that occur subsequent to the effective date of this Settlement Agreement. However, the findings of fact and conclusions of law set forth in this document shall not be used by any other person or entity against Licensee.

**JOINT STIPULATION OF FACT AND CONCLUSIONS OF LAW**

1. The Missouri Pharmacy Board ("Board") is an agency of the State of Missouri created and established pursuant to § 338.140, RSMo, for the purpose of executing and enforcing the provisions of Chapter 338.

2. Burgess holds pharmacist license No. 41818. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. At all times relevant herein, Burgess was employed as a pharmacist at CVS Pharmacy, 8421 NW Prairie View Road, Kansas City, Missouri ("the Pharmacy").

4. On April 28, 2007, Burgess was stopped by Missouri Highway Patrol Trooper Matt Lewis. Trooper Lewis conducted a search of Burgess' vehicle. Burgess' vehicle contained marijuana, a pipe and a prescription bottle bearing prescription number 202045 issued to Steve Allen which contained 60 Carisoprodol tablets. The prescription was purportedly authorized by Dr. James Hall.

5. Beginning in July or August 2006 and continuing through April 2007, Burgess falsified prescriptions and/or misappropriated medications for his personal consumption on four occasions.

6. In or about July or August 2006, Burgess created a false prescription for 60 Carisoprodol tablets for "Bob Allen," a name Burgess selected out of the phone book. Burgess filled the prescription, and took the medication for his personal consumption.

7. In or about September 2006, Burgess created a false prescription for 60 Carisoprodol tablets for "Bob Allen," a name Burgess selected out of the phone book. Burgess filled the prescription, and took the medication for his personal consumption.

8. In or about November or December 2006, Burgess misappropriated 30 Ambien tablets and 30 Carisoprodol tablets for his personal consumption by placing the tablets into a bottle containing Burgess's father's legitimately filled Ziac prescription. Burgess did not create a false prescription for the 30 Ambien tablets or the 30 Carisoprodol tablets.

9. On or about April 28, 2007, Burgess created a false prescription for 60 Carisoprodol tablets for "Steve Allen," a name Burgess selected out of the phone book. Burgess filled the prescription, and took the medication for his personal consumption.

10. Burgess misappropriated the medications without paying for them on three of the four occasions referenced above.

11. Subsequently, Burgess paid restitution to the Pharmacy for the value of the medications.

12. Burgess's conduct as described above constitutes a violation of sections 338.059 and 338.100, RSMo and Board regulation 20 CSR 2220-2.080(1).

13. On or about April 28, 2007, Burgess was charged with one count of possession of a controlled substance and one count of possession of drug paraphernalia with intent to use in the Clinton County, Missouri, Case No. 07CN-CR-00262.

14. On or about May 15, 2007, the prosecuting attorney nolle prosequi count 1 pertaining to possession of a controlled substance and filed an amended information which reduced count II from possession of drug paraphernalia with intent to use to driving a motor vehicle with defective equipment.

15. On or about May 16, 2007, Burgess pled guilty in the 43<sup>rd</sup> Judicial Circuit Court (Clinton County), Missouri to the defective equipment violation referenced in paragraph 9 above. A fine totaling \$343.50 was imposed. Case No. 07CN-CR00262.

Cause for Discipline

16. Section 338.055.2, RSMo, sets forth cause to discipline and states, in relevant portion:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

\* \* \*

(5) ... misconduct, ... fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

\* \* \*

(13) Violation of any professional trust or confidence;

\* \* \*

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

\* \* \*

(17) Personal use or consumption of any controlled substance unless it is prescribed, dispensed, or administered by a health care provider who is authorized by law to do so.

17. Section 195.204.1, RSMo, a drug law of Missouri, states:

1. A person commits the offense of fraudulently attempting to obtain a controlled substance if he obtains or attempts to obtain a controlled substance or procures or attempts to procure the administration of the controlled substance by fraud, deceit, misrepresentation, or subterfuge; or by the forgery or alteration of a prescription or of any written order; or by the concealment of a material fact; or by the use of a false name or the giving of a false address. The crime of fraudulently attempting to obtain a controlled substance shall include, but shall not be limited to nor be limited by, the following:

(1) Knowingly making a false statement in any prescription, order, report, or record, required by sections 195.005 to 195.425;

\* \* \*

(3) Making or uttering any false or forged prescription or false or forged written order;

(4) Affixing any false or forged label to a package or receptacle containing controlled substances;

\* \* \*

2. Fraudulently attempting to obtain a controlled substance is a class D

felony.

\* \* \*

18. Section 196.015, RSMo, is a drug law of the State of Missouri and states, in relevant portion:

196.015. The following acts and the causing thereof within the state of Missouri are hereby prohibited:

(1) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) The adulteration or misbranding of any food, drug, device, or

\* \* \*

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded;

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of sections 196.010 to 196.120;

19. Ambien is a controlled substance pursuant to section 195.017, RSMo.

20. Carisoprodol is available only pursuant to a valid prescription.

21. Burgess violated Sections 195.204, 196.015 and 196.100, RSMo, by making a false prescription for the purpose of diverting Carisoprodol and also by placing Ambien and Carisoprodol in a Ziac prescription vial.

22. There is cause to discipline the pharmacist license held by Burgess pursuant to Sections 338.055.2 (5), (6), (13), (15), and (17), RSMo.

**JOINTLY AGREED DISCIPLINARY ORDER**

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo.

23. Licensee's pharmacy license, number 41818, is placed on **PROBATION** for a period of **FIVE (5) YEARS** (the "Disciplinary Period") beginning on the effective date of this Settlement Agreement. During the Disciplinary Period, Licensee shall be entitled to engage in the practice of pharmacy under Chapter 338, RSMo, provided he adheres to all of the terms of this Settlement Agreement. The terms of the probation shall be:

**I. GENERAL TERMS**

1. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. If at any time Licensee is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work locations he must provide the board of list of locations worked if requested by the Board or a Board representative.

2. Licensee shall pay all required fees for licensing to the Board and shall renew his license prior to October 31 of each licensing year.

3. Licensee shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

4. During the Disciplinary Period, if Licensee ceases to keep his Missouri license current or fails to keep the Board advised of his current place of employment and residence, such periods shall not be deemed or taken as any part of the time of discipline so imposed.

5. Licensee shall provide all current and future pharmacy and drug distributor employers and pharmacist/managers-in-charge a copy of this Settlement Agreement within five (5) business days of the effective date of discipline or the beginning date of each employment. If at any time Licensee is employed by a temporary employment agency he must provide each pharmacy and drug distributor employer and pharmacist/manager-in-charge a copy of this Settlement Agreement prior to or at the time of any scheduled work assignments.

6. Licensee shall not serve as a preceptor for interns.

7. Licensee shall not serve as a pharmacist-in-charge or in a supervisory capacity without prior approval of the Board.

8. Licensee shall not dispense prescriptions for himself or for family members.

9. Licensee's failure to comply with any term and/or condition of this Settlement Agreement shall constitute a violation of this Agreement.

## **II. PERSONAL INTERVIEWS**

10. Licensee shall make himself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Licensee will be notified and given sufficient time to arrange these meetings.

11. Licensee's failure to make himself available for personal interviews shall constitute a violation of this Agreement

## **III. COMPLIANCE REPORTS**

12. Licensee shall report to the Board, on a preprinted form supplied by the Board office, once every 6 months, beginning 6 months after this Settlement Agreement becomes effective, stating truthfully whether or not he has complied with all terms and conditions of his disciplinary order.

## **IV. DRUG TESTING**

13. Licensee shall submit to periodic blood tests, hair follicle and/or urinalysis, at Licensee's cost. The timing and/or scheduling for testing is within the Board's sole discretion.

14. If at any time during the Disciplinary Period, Licensee fails to comply with drug testing, in any respect, such failure shall constitute a violation of this Settlement Agreement.

## **V. CHEMICAL DEPENDENCY EVALUATION AND TREATMENT**

15. Licensee shall complete an alcohol and drug abuse counseling and treatment program approved by the Board. Said program shall meet the requirements set forth in 20 CSR 2220-2.170 (6). **Licensee's completion of the IRC program meets this requirement.**

16. Documentation required for counselor/program approval must be submitted to the Board office and Licensee's counselor/program must receive Board approval within three (3) months after the effective date of this Settlement Agreement. Any unexpected or requested change in treatment counselor/program shall be submitted to the Board within ten (10) days of the change; and the program approval process must again be completed. **Licensee's completion of the IRC program meets this requirement.**

17. Licensee shall, within six (6) weeks of the effective date of this Settlement Agreement, undergo an evaluation for chemical dependency performed by a licensed or certified chemical dependency professional. Licensee shall cause the results of the evaluation to be mailed directly to the Missouri Board of Pharmacy, P.O. Box 625, Jefferson City, Missouri 65102 within ten (10) days after the evaluation has been completed. Each evaluation report shall include the licensee's present state of impairment; a description of the tests performed and the results; discussion of relevant clinical interview findings/interpretations; specification of DSM IV diagnosis/es; appropriate treatment recommendations/plan; the beginning date of treatment; and an assessment for future prospects for recovery. If there is no diagnosis requiring treatment, this should be reported in the evaluation. Licensee shall follow any treatment recommendations made by the chemical dependency professional. **Licensee's completion of the IRC program meets this requirement.**

18. Licensee shall provide a copy of this Settlement Agreement to all chemical dependency professionals involved in Licensee's treatment, and all medical professionals issuing/renewing a controlled substance, carisoprodol, nalbuphine, or tramadol prescription

to Licensee. Said disclosure shall be made before the evaluation required in Paragraph 17 above, before the issuance of any new prescriptions and, in the case of renewed/refilled prescriptions, disclosure shall be made within ten (10) days of the effective date of this Settlement Agreement. Licensee shall simultaneously report to the Board office that said disclosure has taken place.

19. Licensee shall execute a medical release effective for the entire Disciplinary Period authorizing any chemical dependency professional or medical professional to release records and/or communicate with the Board, or its representative, regarding Licensee's treatment. Licensee shall not take any action to cancel this release. Licensee shall take all steps necessary to continue the release in effect and shall provide a new release when requested.

20. Licensee shall cause a report of ongoing treatment evaluation to be submitted from the board-approved chemical dependency professional to the Board office on the schedule prescribed by 20 CSR 2220-2.170(6)(E). The report shall be completed by the treating professional within four weeks prior to the date it is due. The report shall include an evaluation of Licensee's current progress and status related to the treatment recommendations/plan, and Licensee's current prognosis as well as revised treatment recommendations/plan.

21. Licensee shall submit evidence of weekly (or counselor recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous, or other support group meetings to the Board once every six (6) months throughout the disciplinary period. The documentation shall include the date, time, and place of each meeting and shall bear a signature or abbreviated signature of another person verifying attendance.

22. If the treatment of Licensee is successfully completed at any time during the Disciplinary Period, Licensee shall cause the board-approved chemical dependency professional to submit a report of final evaluation/summary

23. Licensee shall abstain completely from the use or consumption of alcohol in any form, including over-the-counter medications and mouthwashes. The presence of any alcohol or alcohol metabolite whatsoever in a biological fluid sample shall constitute a violation of discipline.

24. Licensee shall provide the Board office, within 10 days of the effective date of this Settlement Agreement, a copy of all controlled substance prescriptions, dispensed or to be dispensed, in Licensee's possession on the effective date of discipline. The following information shall be provided:

- A. the prescription number,
- B. drug name,
- C. strength,
- D. dosage instructions,
- E. prescriber's name and address,
- F. the name and address of the pharmacy where the prescription was dispensed,
- G. date dispensed,
- H. number of refills available, and
- I. any other requested information concerning the prescription.

24. Licensee shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Licensee has a bona fide relationship as a patient. Upon request, Licensee shall execute a medical release authorizing the medical professional that prescribed the controlled substance or other drug for which a prescription is required to release records and/or communicate with the Board, or its representative, regarding Licensee's treatment.

25. The presence of any controlled substance whatsoever in a biological fluid sample for which Licensee does not hold a valid prescription shall constitute a violation of discipline. Licensee shall provide the Board with a copy of each prescription received, controlled or non-controlled, within five (5) days of Licensee's receipt of the prescription

26. Licensee shall inform any professional preparing a prescription for Licensee that Licensee is chemically dependent.

## **VI. PARTICIPATION IN THE BOARD'S WELL-BEING PROGRAM**

27. When the Well-being Committee created in 2007 by Senate Bill 195 in Section 338.380 is established, fully functional, and fully operational, Licensee shall become a participant in the Committee's program for the remainder of the Disciplinary Period. The Board will notify Licensee when the Well-being Committee is fully functional and fully operational. Licensee shall bear all costs of participation in the program.

28. If Licensee fails in any respect to comply with the Well-Being Program, such failure shall constitute a violation of this Settlement Agreement.

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29. The parties to this Settlement Agreement understand that the Missouri Pharmacy Board will maintain this Settlement Agreement as an open record of the Board as provided in Chapters 338, 610, and 620, RSMo.

30. Upon the expiration of said discipline, Licensee's license to practice pharmacy in Missouri shall be fully restored if all other requirements of law have been satisfied; provided however, that in the event the Board determines that the Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline the Licensee.

31. No order shall be entered by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

32. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it

may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

33. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.


34. Licensee, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof to be void or unenforceable.

35. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen (15) days thereafter, submit the Agreement to the


Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit his request to: **Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P. O. Box 1557, Jefferson City, Missouri 65101**

36. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect fifteen (15) days after the document is signed by the Executive Director of the Board.

LICENSEE

  
GARY W. BURGESS

BOARD

  
Kimberly A. Grinston  
Executive Director  
Missouri Pharmacy Board

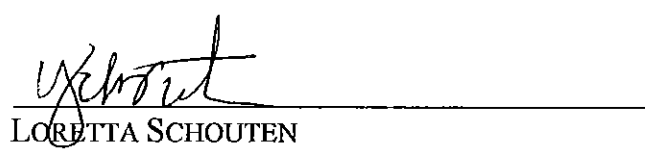
Date 1-26-2009

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